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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

TESLA, INC., a Delaware corporation,

Plaintiff,

vs.

MARTIN TRIPP, an individual,

Defendant.

Case No. 3:18-cv-00296-LRH-VPC

**DEFENDANT MARTIN TRIPP'S
ANSWER TO COMPLAINT AND
COUNTERCLAIM**

Defendant Martin Tripp ("Mr. Tripp" or "Defendant"), by and through undersigned counsel, for his Answer to Plaintiff Tesla, Inc. ("Tesla" or "Plaintiff")'s Complaint hereby admits, denies, and affirmatively alleges as follows:

SUMMARY OF DISPUTE

1. Defendant admits he is "a former employee of Tesla, Inc." Defendant denies all remaining allegations of Paragraph 1.

BACKGROUND

10. Defendant admits he “joined Tesla in October 2017 at the Nevada Gigafactory[.]” Defendant also admits he had “access” to “certain facets of the manufacturing process for the company’s battery modules.” Defendant denies all remaining allegations of Paragraph 10.

11. Defendant denies the allegations of Paragraph 11.

12. Defendant admits that “on or about May 17, 2018, Tripp was assigned to a new role.” Defendant denies all remaining allegations of Paragraph 12.

13. Defendant denies the allegations of Paragraph 13.

14. Defendant admits that “[o]n June 14 and 15, 2018, Tesla investigators interviewed Tripp[.]” Defendant denies all remaining allegations of Paragraph 14.

15. Defendant denies the allegations of Paragraph 15.

16. Defendant denies the allegations of Paragraph 16.

17. Defendant admits he “claimed that punctured battery cells had been used in some Model 3 customer vehicles[.]” Defendant also admits he “claimed that Tesla was delayed in bringing new manufacturing equipment online at the Gigafactory.” Defendant also admits he made claims about the “amount and value of ‘scrap’ material that Tesla generated during the manufacturing process[.]” Defendant denies all remaining allegations of Paragraph 17, including any and all allegations or insinuations that the foregoing “claim[s]” are “false” or “grossly overstate[d].”

18. Defendant denies the allegations of Paragraph 18.

FIRST CLAIM FOR RELIEF

Defend Trade Secrets Act, 18 U.S.C. §§ 1836 *et seq.*

19. No facts are alleged in Paragraph 19, and thus, no response is required. To the extent a response is required, Defendant incorporates herein by reference each and every response set forth in the foregoing Paragraphs.

1 20. Paragraph 20 does not pertain to Defendant, and Defendant is without
2 sufficient knowledge or information to form a belief as to the truth or falsity of the
3 allegations of Paragraph 20. Therefore, Defendant denies the allegations of Paragraph 20 in
4 their entirety.

5 21. Paragraph 21 does not pertain to Defendant, and Defendant is without
6 sufficient knowledge or information to form a belief as to the truth or falsity of the
7 allegations of Paragraph 21. Therefore, Defendant denies the allegations of Paragraph 21 in
8 their entirety.

9 22. Defendant denies the allegations of Paragraph 22.

10 23. Defendant denies the allegations of Paragraph 23.

11 24. Defendant denies the allegations of Paragraph 24.

12 25. Paragraph 25 states a legal conclusion to which no response is required. To
13 the extent a response is required, Defendant denies the allegations of Paragraph 25.

14 26. No facts are alleged in Paragraph 26, and thus, no response is required. To the
15 extent a response is required, Defendant denies the allegations of Paragraph 26.

16 27. Paragraph 27 states a legal conclusion to which no response is required. To
17 the extent a response is required, Defendant denies the allegations of Paragraph 27 and
18 affirmatively alleges that he has not been enriched.

19 28. Paragraph 28 states a legal conclusion to which no response is required. To
20 the extent a response is required, Defendant denies the allegations of Paragraph 28.

21 **SECOND CLAIM FOR RELIEF**

22 **Nevada Uniform Trade Secrets Act, Nev. Rev. Stat. §§ 600A.10 *et seq.***

23 29. No facts are alleged in Paragraph 29, and thus, no response is required. To the
24 extent a response is required, Defendant incorporates herein by reference each and every
25 response set forth in the foregoing Paragraphs.

1 30. Paragraph 30 does not pertain to Defendant, and Defendant is without
2 sufficient knowledge or information to form a belief as to the truth or falsity of the
3 allegations of Paragraph 30. Therefore, Defendant denies the allegations of Paragraph 30 in
4 their entirety.

5 31. Defendant denies the allegations of Paragraph 31.

6 32. Defendant denies the allegations of Paragraph 32.

7 33. Defendant denies the allegations of Paragraph 33.

8 34. No facts are alleged in Paragraph 34, and thus, no response is required. To the
9 extent a response is required, Defendant denies the allegations of Paragraph 34.

10 35. Defendant denies the allegations of Paragraph 35.

11 **THIRD CLAIM FOR RELIEF**

12 **Breach of Contract**

13 36. No facts are alleged in Paragraph 36, and thus, no response is required. To the
14 extent a response is required, Defendant incorporates herein by reference each and every
15 response set forth in the foregoing Paragraphs.

16 37. Defendant denies the allegations of Paragraph 37.

17 38. Paragraph 38 does not pertain to Defendant, and Defendant is without
18 sufficient knowledge or information to form a belief as to the truth or falsity of the
19 allegations of Paragraph 38. Therefore, Defendant denies the allegations of Paragraph 38 in
20 their entirety.

21 39. Defendant denies the allegations of Paragraph 39.

22 40. Paragraph 40 does not pertain to Defendant, and Defendant is without
23 sufficient knowledge or information to form a belief as to the truth or falsity of the
24 allegations of Paragraph 40. Therefore, Defendant denies the allegations of Paragraph 40 in
25 their entirety.

26 41. Defendant denies the allegations of Paragraph 41.

42. Defendant denies the allegations of Paragraph 42.

43. Defendant denies the allegations of Paragraph 43.

FOURTH CLAIM FOR RELIEF

Breach of Fiduciary Duty of Loyalty

44. No facts are alleged in Paragraph 44, and thus, no response is required. To the extent a response is required, Defendant incorporates herein by reference each and every response set forth in the foregoing Paragraphs.

45. Paragraph 45 states a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations of Paragraph 45.

46. Defendant denies the allegations of Paragraph 46.

47. Defendant denies the allegations of Paragraph 47.

48. Defendant denies the allegations of Paragraph 48.

49. Defendant denies the allegations of Paragraph 49.

50. Defendant denies the allegations of Paragraph 50.

FIFTH CLAIM FOR RELIEF

Nevada Computer Crimes Law, Nev. Rev. Stat. § 205.4765

51. No facts are alleged in Paragraph 51, and thus, no response is required. To the extent a response is required, Defendant incorporates herein by reference each and every response set forth in the foregoing Paragraphs.

52. Paragraph 52 states a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations of Paragraph 52.

53. Paragraph 53 states a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations of Paragraph 53.

54. Defendant denies the allegations of Paragraph 54.

55. Defendant denies the allegations of Paragraph 55.

56. Defendant denies the allegations of Paragraph 56.

AFFIRMATIVE DEFENSES

57. Defendant affirmatively alleges that Plaintiff's Complaint fails to state a claim upon which relief may be granted against Defendant.

58. Defendant affirmatively alleges that damages, if any, incurred by Plaintiff were caused or contributed to, in whole or in part, by Plaintiff's own negligence, acts, or omissions.

59. Defendant affirmatively alleges that Plaintiff's claims are barred by the doctrine of *in pari delecto*.

60. Defendant affirmatively alleges that Plaintiff assumed the risk of sustaining damages, if any, from Defendant's conduct.

61. Defendant affirmatively alleges that damages, if any, incurred by Plaintiff were caused or contributed to, in whole or in part, by acts or omissions of third parties over which Defendant had no control and for whose acts or omissions Defendant is not responsible.

62. Defendant affirmatively alleges that he is immune from prosecution of or being held liable for Plaintiff's claims pursuant to federal and/or state law.

63. Defendant affirmatively alleges that his actions were necessary, reasonable, and/or privileged.

64. Defendant affirmatively alleges that Plaintiff failed and/or neglected to reasonably mitigate its damages, if any, which bars or diminishes any recovery thereof.

65. Defendant affirmatively alleges that he has not been enriched.

66. Defendant affirmatively alleges that Plaintiff's claims are barred by its own illegal or otherwise wrongful actions.

67. Defendant affirmatively alleges that Plaintiff's claims are barred by the doctrine of equitable estoppel.

68. Defendant affirmatively alleges that Plaintiff acted with unclean hands.

1 69. Defendant affirmatively alleges that he was excused from performance under
2 the alleged contract in Plaintiff's Complaint.

3 70. Defendant affirmatively alleges that Plaintiff is barred from recovery on the
4 claims alleged in the Complaint as Plaintiff committed acts or otherwise acted improperly in
5 dealing with Defendant.

6 71. Defendant affirmatively alleges that Plaintiff is barred from recovery, in
7 whole or in part, because Plaintiff's own actions and conduct excused Defendant from
8 performing its alleged obligations, if any, to Plaintiff.

9 72. Defendant affirmatively alleges that the allegations of the Complaint allege
10 obligations non-existent, not contracted for, and/or outside of the contract, if any, between
11 the parties, thus barring or diminishing recovery by Plaintiff.

12 73. Defendant affirmatively alleges that he did not owe a legal duty of care to
13 Plaintiff and was never in a fiduciary relationship with Plaintiff.

14 74. Defendant affirmatively alleges that Plaintiff's Complaint is defective in that
15 Plaintiff failed to join indispensable parties.

16 75. Defendant affirmatively alleges that Plaintiff suffered no damages that were
17 caused by Defendant.

18 76. Defendant affirmatively alleges that Plaintiff waived any claims for damages.

19 77. Defendant affirmatively alleges that the alleged agreement referred to in
20 Plaintiff's Complaint is void due to lack of performance on the part of Plaintiff,
21 unconscionability, as being against public policy, and/or being an illegal/unreasonable
22 restraint on trade.

23 78. Defendant affirmatively alleges that he was acting with express or implied
24 authorization.

FACTUAL BACKGROUND

10. From October 2017 to June 2018, Mr. Tripp was employed by Counterdefendant as a Level 3 Lead Process Engineering Technician at the Gigafactory manufacturing compound in Sparks, Nevada (the “Gigafactory”).

11. Prior to his employment with Counterdefendant, Mr. Tripp had over two decades of experience in the electronic and engineering industries, including serving as an Aviation Electronics Technician in the United States Navy for approximately four years.

12. In mid-2017, Counterdefendant initiated contact with and recruited Mr. Tripp, who was then residing in Wisconsin, for an employment position at the Gigafactory. During its recruitment, Counterdefendant paid for Mr. Tripp to fly to Nevada for an interview and tour of the Gigafactory.

13. Without Counterdefendant’s intentional recruitment, Mr. Tripp would not have applied to or become employed by Counterdefendant.

14. According to Counterdefendant’s website, “Tesla’s mission is to accelerate the world’s transition to sustainable energy.” Counterdefendant widely promotes itself to the general public as an environmentally-conscious company with cutting-edge technologies and manufacturing capabilities.

15. At the Gigafactory, Counterdefendant manufactures vehicle batteries and drive units for its Model 3 vehicle. Based upon information and belief, Counterdefendant has, and at all relevant times had, more than 1,000 employees working at the Gigafactory.

16. Based upon information and belief, Counterdefendant’s ability to mass produce the Model 3, an electric vehicle, is critical to its current and future economic success, as well as its viability as an ongoing concern.

17. Based upon information and belief, since Counterdefendant first publicly announced that it would be producing Model 3 vehicles, Counterdefendant has accepted

1 reservations and monetary deposits for the vehicle from hundreds of thousands of
2 customers.

3 18. During his employment with Counterdefendant, Mr. Tripp was assigned to
4 work on production lines for two different vehicle parts used in the Model 3: the stator
5 production line and the battery module production line.

6 19. While assigned to the stator production line, Mr. Tripp's primary
7 responsibilities included reporting daily scrap/non-conforming material volumes to
8 Counterdefendant's engineering and production departments; performing high-level
9 functions as a process technician; assisting Counterdefendant's engineering department with
10 process improvements; and working with other process technicians to, among other things,
11 train, mentor, assign tasks, and place orders for necessary materials. During this time, Mr.
12 Tripp began witnessing several concerning business practices that were inconsistent with
13 Counterdefendant's mission statement and its representations to investors and the general
14 public.

15 20. For example, throughout the first few months of his employment, Mr. Tripp
16 observed large quantities of waste and "scrap" vehicle parts lying haphazardly on the
17 ground inside the Gigafactory. Mr. Tripp discussed this issue, amongst others, with his
18 supervisors and questioned why so many vehicle parts were being scrapped and carelessly
19 left on the ground inside the facility. Mr. Tripp's concerns were never addressed or
20 resolved. In one instance, Mr. Tripp's supervisor stated that despite the products being used
21 in vehicles shipped to customers, Counterdefendant's stator production line was not a
22 "signed-off" production line and was still being "validated."

23 21. In or around March 2018, Counterdefendant initiated a company-wide effort
24 to reach the 2,500 Model 3 vehicles per week production benchmark that it had been
25 publicly promoting. This company-wide effort, which had the end objective of producing
26 5,000 Model 3 vehicles per week by July 2018, was known as the "March to 2,500."

1 22. Around this same time, Mr. Tripp observed that the waste and scrap levels and
2 non-conforming materials generated by Counterdefendant dramatically increased. Mr.
3 Tripp frequently raised his concerns about the seemingly exorbitant amounts of scrap with
4 his managers and supervisors but no action was taken to address the issues or reduce the
5 amount of waste being generated by the manufacturing process.

6 23. On May 16, 2018, Mr. Tripp directly e-mailed Counterdefendant's CEO, Mr.
7 Musk, about the high levels of waste and scrap that was being generated by the stator
8 production line. In his e-mail, Mr. Tripp included graphical charts showing the high levels
9 of waste and scrap. Mr. Tripp had been told that Mr. Musk was scheduled to visit the
10 Gigafactory that evening, so he wanted to notify Mr. Musk of the ongoing, uncorrected
11 problems so Mr. Musk could take corrective action.

12 24. Later in the afternoon on May 16, 2018, Mr. Tripp's Manufacturing Engineer
13 Manager asked Mr. Tripp to "forward" him the "email to Elon so that I can avoid getting
14 fired tonight." After Mr. Tripp asked why the Manufacturing Engineer Manager would get
15 fired, the Manufacturing Engineer Manager explained: "because I'm the guy showing him
16 the line and our problems like yield, the guy standing in front of him is the guy who gets
17 fired, and tonight I'm the guy in front of him."

18 25. That same day, a Design Engineer asked Mr. Tripp to "clean up" the stator
19 production line area so Mr. Musk would not see the mounds of scrap and waste lying on the
20 ground. Mr. Tripp declined to do so because he had repeatedly complained to his
21 supervisors about that very issue over the course of several months, but his complaints had
22 been ignored. Mr. Tripp wanted Mr. Musk to observe how the Gigafactory was actually
23 being operated.

24 26. The next day, May 17, 2018, Mr. Tripp was "reassigned" to the battery
25 module production line.

1 27. While assigned to the battery module production line, Mr. Tripp's primary
2 responsibility was to inventory aging work in process ("WIP") of the various components of
3 the battery modules used in Model 3 vehicles.

4 28. As is publicly known, the battery modules used in Model 3 vehicles are
5 comprised of multiple components, including thousands of individual battery cells. A
6 battery cell is comprised of a thin, metallic cannister containing lithium powder and/or
7 cobalt. Approximately one hundred and fifty battery cells are then affixed to a cooling
8 ribbon to form a "bandolier." Seven bandoliers are then affixed side-by-side to make a
9 battery module. One Model 3 has four battery modules.

10 29. While assigned to the battery module production line, Mr. Tripp learned of
11 and witnessed additional unnerving, dangerous, and wasteful business practices that, again,
12 were inconsistent with Counterdefendant's mission statement and its representations to
13 investors and the general public.

14 30. For example, Mr. Tripp routinely observed hundreds of bandoliers being
15 scrapped during a single shift. Mr. Tripp also observed battery cells that supposedly had
16 been permanently affixed to bandoliers, fall off and crash on the floor. Mr. Tripp even
17 observed that the positive and negative ends of battery modules were sometimes reversed,
18 thereby causing the batteries to short circuit.

19 31. Mr. Tripp also observed Counterdefendant's employees systematically reusing
20 vehicle parts, such as battery cells and bandoliers that had been previously discarded as
21 waste. Mr. Tripp was even told by one colleague that the colleague, after seeing damaged
22 products being reused, intentionally further damaged the parts to prevent them from being
23 used in a Model 3.

24 32. Mr. Tripp was also told about and personally observed several semi-trucks
25 filled with scrap and other waste from Counterdefendant's manufacturing process. The
26 semi-trucks, which were not climate-controlled, were parked in a parking lot near the
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1 Gigafactory. Based upon information and belief, Counterdefendant publicly stated that its
2 scrap battery modules were being stored in a climate-controlled environment.

3 33. In mid-May 2018, Counterdefendant's Manufacturing Operating System
4 ("MOS") showed that from January 1, 2018 to mid-May 2018, approximately \$150,000,000
5 to \$200,000,000 worth of battery module parts, including bandoliers and battery cells, had
6 been categorized as "Scrap." By running a "with child" query, Mr. Tripp determined that
7 these "Scrap" battery module parts were actual vehicle parts with an accompanying bill of
8 materials.

9 34. Shortly thereafter, Mr. Tripp conducted the same standard query in the MOS
10 and found that many of the parts, once labelled as "Scrap," were now identified as "Test."
11 The parts that were changed from "Scrap" to "Test" were those parts that had initially been
12 identified as "Scrap" between January 1, 2018 and March 20, 2018. Yet, based upon
13 information and belief, the vehicle parts that had been initially identified as "Scrap" had
14 already been removed from the Gigafactory and discarded. The change in labelling from
15 "Scrap" to "Test" was corroborated by one of Mr. Tripp's colleagues, an Engineer with
16 Counterdefendant.

17 35. Perhaps most egregiously, Mr. Tripp was told by multiple process technicians
18 and associates that a "teach pin" had been left on a robot used in the manufacturing process
19 of battery modules, causing damage to the battery modules. Mr. Tripp was told by the
20 process technicians and associates that when the robot had picked up a battery module, the
21 teach pin, which had become "unthreaded" and "longer," struck the clamshell (*i.e.*, the outer
22 plastic coating) of the battery module, causing a dent and/or puncture. Mr. Tripp was
23 further told that, eventually, the teach pin began puncturing the actual battery cells within
24 the battery module. The process technicians and associates told Mr. Tripp that
25 approximately 1,173 battery modules had been damaged by this process.

1 36. The approximately 1,173 dented and/or punctured battery modules were
2 identified in the MOS as “Containment AR622.”

3 37. After informing Mr. Tripp about Containment AR622, the process technicians
4 and associates personally showed Mr. Tripp several of the dented and/or punctured battery
5 modules within the containment. While observing the bottom of the battery cells in one
6 battery module listed in Containment AR622, Mr. Tripp saw that a battery cell had been
7 punctured and inserted a Q-tip into the punctured cell about one-half inch. When Mr. Tripp
8 removed the Q-tip, it was coated with a white powdery residue, indicating that the battery
9 cell had short circuited.

10 38. During his orientation, Mr. Tripp had been taught by Counterdefendant that
11 when a lithium-ion battery, such as the batteries used in the Model 3, has internally short
12 circuited, it is more prone to “thermal runaway” at high temperatures, thereby becoming
13 more vulnerable to combustion and/or explosion.

14 39. After observing the punctured battery cell in the battery module from
15 Containment AR622, Mr. Tripp asked the process technicians and associates what happened
16 to the battery modules within Containment AR622 and if they were scrapped. Mr. Tripp
17 was told that instead of scrapping the battery modules, technicians “reworked” the modules
18 by squeezing an adhesive into the punctured battery cell and then gluing a piece of
19 clamshell over the adhesive. In doing so, Counterdefendant made it appear as though there
20 was no internal or external damage to the battery module. After being “reworked” with the
21 adhesive, the battery modules were then returned to the manufacturing processing line.
22 Based upon information and belief, no quality inspections were performed on these
23 “reworked” battery modules before they were returned to the manufacturing processing line.
24 Mr. Tripp personally observed technicians perform this process on several battery modules.

25 40. Mr. Tripp researched Containment AR622 within the MOS and observed that
26 the “cause” for Containment AR622 was “Punctured cells and damaged NIC clamshell due
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1 clash with Robot teach pin.” Further, the “Title” of the battery modules within Containment
2 AR622 in the MOS stated “Punctured Cell.”

3 41. Utilizing the MOS, Mr. Tripp monitored some of the dented and/or punctured
4 battery modules in Containment AR622 over a few-day period by tracking the modules’
5 serial numbers. The tracking system showed that the dented and/or punctured battery
6 modules, instead of being discarded, were being used in Model 3 vehicles.

7 42. Mr. Tripp then performed a standard database query to determine how many
8 of the battery modules in Containment AR622 were in Model 3 vehicles that had been
9 shipped to or were being prepared to ship to customers. The results showed that 732 of the
10 dented and/or punctured battery modules in Containment AR622 were used in Model 3
11 vehicles that had been shipped to or were in the process of being shipped to customers.

12 43. Based upon information and belief, Counterdefendant recently discontinued
13 the use of its vehicle-part tracking system within the MOS. As a result, traceability is
14 unknown for many vehicle-parts and/or materials which could have a drastic effect on
15 determining where the part(s) were made, when, and by whom.

16 44. Mr. Tripp repeatedly raised the foregoing issues to his colleagues, including
17 engineers, technicians, and a human resource representative; four of his supervisors and
18 managers; his plant manager; and even Mr. Musk.

19 45. Counterdefendant never took any corrective action and terminated Mr. Tripp
20 on June 19, 2018.

21 46. Prior to and after Mr. Tripp was terminated, Counterdefendant published
22 several false and defamatory statements and/or implications about Mr. Tripp.

23 47. For example, based upon information and belief, on or about June 17, 2018,
24 Counterdefendant’s CEO, Mr. Musk, sent an e-mail to all of Counterdefendant’s employees
25 stating, in pertinent part, as follows:

26 I was dismayed to learn this weekend about a Tesla employee who had
27 conducted quite extensive and damaging sabotage to our operations. This

1 included making direct code changes to the Tesla Manufacturing Operating
2 System under false usernames and exporting large amounts of highly sensitive
3 Tesla data to unknown third parties.

4 The full extent of his actions are not yet clear, but what he has admitted
5 to so far is pretty bad. His stated motivation is that he wanted a promotion
6 that he did not receive. In light of these actions, not promoting him was
7 definitely the right move.

8 However, there may be considerably more to this situation than meets
9 the eye, so the investigation will continue in depth this week. We need to
10 figure out if he was acting alone or with others at Tesla and if he was working
11 with any outside organizations.

12 As you know, there are a long list of organizations that want Tesla to
13 die. These include Wall Street short-sellers, who have already lost billions of
14 dollars and stand to lose a lot more. Then there are the oil & gas companies,
15 the wealthiest industry in the world — they don't love the idea of Tesla
16 advancing the progress of solar power & electric cars. Don't want to blow
17 your mind, but rumor has it that those companies are sometimes not super
18 nice. Then there are the multitude of big gas/diesel car company competitors.
19 If they're willing to cheat so much about emissions, maybe they're willing to
20 cheat in other ways?

21 Most of the time, when there is theft of goods, leaking of confidential
22 information, dereliction of duty or outright sabotage, the reason really is
23 something simple like wanting to get back at someone within the company or
24 at the company as a whole. Occasionally, it is much more serious.

25 Please be extremely vigilant, particularly over the next few weeks as
26 we ramp up the production rate to 5k/week. This is when outside forces have
27 the strongest motivation to stop us.

28 See Exhibits A–B, attached hereto (the “June 17, 2018 Publication”).

48. Counterclaimant did not “sabotage” Counterdefendant or its “operations” as
asserted in the June 17, 2018 Publication.

49. Counterclaimant did not “mak[e] direct code changes to the Tesla
Manufacturing Operating System under false usernames” or “export[] large amounts of
highly sensitive Tesla data to unknown third parties” as asserted in the June 17, 2018
Publication.

1 50. Counterclaimant did not “admit” or “state” that his “motivation” for reporting
2 the foregoing issues regarding Counterdefendant’s manufacturing process was “that he
3 wanted a promotion that he did not receive” as asserted in the June 17, 2018 Publication. In
4 reality, during his employment with Counterdefendant, Mr. Tripp never applied for or
5 actively sought a promotion, nor, to his knowledge, was he even eligible for a promotion.

6 51. The implication in the June 17, 2018 Publication that Mr. Tripp was
7 associated or otherwise working with an outside third-party “organization” to intentionally
8 “cheat” or “sabotage” Counterdefendant is false.

9 52. All of the foregoing statements and/or implications published in the June 17,
10 2018 Publication are false and defamatory and were published with negligence, if not actual
11 knowledge, as to the falsity of the matters asserted therein.

12 53. On or about June 20, 2018, a spokesperson for Counterdefendant stated:

13 This afternoon, we received a phone call from a friend of Mr. Tripp
14 telling us that Mr. Tripp would be coming to the Gigafactory to “shoot the
15 place up.” Police have been notified and actions are being taken to enhance
security at the Gigafactory.

16 See **Exhibits C–F**, attached hereto (the “June 20, 2018 Statement”).

17 54. Similarly, based upon information and belief, on that same date,
18 Counterdefendant’s CEO, Mr. Musk, stated in an e-mail to a national media outlet that Mr.
19 Tripp “sent [him] a threatening email” and that “we received a call at the Gigafactory that
20 [Mr. Tripp] was going to come back and shoot people.” See **Exhibit G**, attached hereto (the
21 “June 20, 2018 Publication”).

22 55. Mr. Tripp never stated, to a “friend” or otherwise, that he was “going to . . .
23 shoot people” at the Gigafactory or that he was going to “shoot . . . up” the Gigafactory as
24 asserted in the June 20, 2018 Statement and June 20, 2018 Publication, respectively.
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1 56. Based upon information and belief, Counterdefendant did not “receive[] a
2 phone call from a friend of Mr. Tripp” who stated Mr. Tripp was going to “shoot . . . up” the
3 Gigafactory as asserted in the June 20, 2018 Statement.

4 57. Based upon information and belief, Counterdefendant did not “receive[] a
5 call” from someone who stated that Mr. Tripp was going to “come back” to the Gigafactory
6 and “shoot people” as asserted in the June 20, 2018 Publication.

7 58. Even if Counterdefendant did receive a phone call from someone who alleged
8 Mr. Tripp was going to “shoot . . . up” the Gigafactory, Counterdefendant did not, based
9 upon information and belief, conduct a reasonable investigation to determine whether the
10 purported caller was actually a “friend of Mr. Tripp” before making the foregoing false and
11 defamatory publication, such as obtaining the name of the caller or ascertaining how the
12 caller knew Mr. Tripp. Counterdefendant, therefore, acted with at least negligence when it
13 published that “a friend of Mr. Tripp” called Counterdefendant and stated Mr. Tripp was
14 going to “shoot . . . up” the Gigafactory.

15 59. Based upon information and belief, when Counterdefendant reported the
16 alleged phone call to the Storey County Sheriff’s Office, Counterdefendant did not provide
17 the name of the “friend of Mr. Tripp” who purportedly called Counterdefendant. Further,
18 Counterdefendant provided inconsistent responses to law enforcement officers with regard
19 to whether the purported caller was a female or male. Moreover, based upon information
20 and belief, Counterdefendant provided false information to the Storey County Sheriff’s
21 Office with respect to Mr. Tripp, including that Counterdefendant was able to independently
22 “verify” that Mr. Tripp was “armed” with a weapon when, in fact, he was not.

23 60. The Storey County Sheriff’s Office conducted an investigation into the
24 alleged phone call. During the investigation, Counterdefendant appeared to know exactly
25 where Mr. Tripp was located the majority of the time and, after being asked by the
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1 investigating deputies how it was aware of such information, Counterdefendant simply
2 replied “little birds sing.”

3 61. During the investigation, Mr. Tripp voluntarily met with two deputies from
4 the Storey County Sheriff’s Office. Before the interview, the deputies frisked Mr. Tripp and
5 noted in their report that Mr. Tripp was “visibly shaken and was crying.” The deputies also
6 noted that Mr. Tripp told them that his “life was in shambles” and that “out of fear for” his
7 family’s safety, he and his family would be relocating.

8 62. The Sheriff’s Office determined there was no credible threat, that Mr. Tripp
9 was not armed, and that Mr. Tripp did not likely have access to firearms.

10 63. Based upon information and belief, Counterdefendant wanted the purported
11 phone call and alleged threat against the Gigafactory to become highly publicized in order
12 to harm and discredit Mr. Tripp before the general public. For example, Counterdefendant
13 repeatedly asked the Storey County Sheriff’s Office whether it would be making a statement
14 to the press about the purported phone call and its investigation thereof.

15 64. Counterdefendant also made false and defamatory statements about Mr. Tripp
16 in an e-mail communication to the media on or about June 22, 2018. See Exhibit C (the
17 “June 22, 2018 Publication”).

18 65. The June 20, 2018 Statement, June 20, 2018 Publication, and June 22, 2018
19 Publication are false and defamatory and were published with negligence, if not actual
20 knowledge, as to the falsity of the matters asserted therein.

21 66. Based upon information and belief, the June 20, 2018 Statement, June 20,
22 2018 Publication, and June 22, 2018 Publication were intentionally published to retaliate
23 against Mr. Tripp and discredit him before the general public.

24 67. To further retaliate against and discredit Mr. Tripp, on July 5, 2018,
25 Counterdefendant’s CEO, Mr. Musk, published the following statement on Twitter:
26 “Indeed, very simple question. To be specific: @lopezlinette, did you compensate or
27
28

1 promise to compensate Martin Tripp for inside information about Tesla? Did he, under that
2 inducement, provide you with exaggerated negative info, which you printed, but turned out
3 to be untrue?" See Exhibit H, attached hereto (the "July 5, 2018 Publication").

4 68. The Twitter account "@lopezlinette" belongs to Linette Lopez, a reporter with
5 Business Insider, who has published articles about Counterdefendant.

6 69. Mr. Tripp has never received any compensation from Ms. Lopez, nor has Ms.
7 Lopez ever offered Mr. Tripp any compensation or promise of compensation.

8 70. The July 5, 2018 Publication falsely implies that Mr. Tripp accepted a bribe
9 from Ms. Lopez in exchange for providing information about Counterdefendant.

10 71. Mr. Tripp did not provide "exaggerated negative info" about
11 Counterdefendant to Ms. Lopez, nor did he provide any information to Ms. Lopez that
12 "turned out to be untrue" as asserted in the July 5, 2018 Publication.

13 72. The foregoing false allegations and/or implications published in the July 5,
14 2018 Publication are defamatory and were published with negligence, if not actual
15 knowledge, as to the falsity of the matters asserted and/or implied therein.

16 73. Mr. Musk's Twitter account currently has over 22,000,000 "followers."

17 74. On June 14, 2018, after Mr. Tripp had been interrogated by Counterdefendant
18 for multiple days, three non-uniformed security officers escorted Mr. Tripp out of the
19 Gigafactory. In doing so, the officers led Mr. Tripp directly through the engineering
20 production space, parading him before numerous of his colleagues. Once outside, the non-
21 uniformed security officers surrounded Mr. Tripp's vehicle and would not let him leave
22 until a truck was able to follow Mr. Tripp off of the premises. While he was being escorted
23 out of the Gigafactory, several employees Mr. Tripp knew asked him what was happening
24 but were sent away by the security personnel. This ordeal, which, *inter alia*, implied that
25 Mr. Tripp was a danger to those around him, was highly embarrassing and distressing to Mr.
26 Tripp.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing facts, Counterclaimant requests judgment against Counterdefendant awarding the following:

A. For actual, compensatory, and presumed damages as a result of Counterdefendant's false and defamatory publications concerning Counterclaimant in a specific amount to be proven at trial but not less than \$1,000,000.00.

B. For punitive damages.

C. For attorneys' fees and costs incurred by Counterclaimant.

D. For interest on the foregoing amounts at the statutory rate.

E. For such other relief in favor of Counterclaimant and against Counterdefendant as the Court or other trier of fact deems just and appropriate under the circumstances.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Counterclaimant demands a trial by jury of the causes of action alleged herein.

DATED this 31st day of July, 2018.

TIFFANY & BOSCO, P.A.

By /s/ Matthew D. Dayton

Robert D. Mitchell

William M. Fischbach III

Christopher J. Waznik

Matthew D. Dayton

Camelback Esplanade II, Seventh Floor

2525 East Camelback Road

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Phoenix, Arizona 85016-4229
Counsel for Defendant/Counterclaimant
Martin Tripp

CERTIFICATE OF SERVICE

I hereby certify and declare under penalty of perjury that on July 31, 2018, I electronically filed the foregoing with the Clerk of Court for filing and uploading to the CM/ECF system which will send notification of such filing to all parties of record.

/s/ Tracee A. Loveland
